

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-35

August 31, 1999

RE: May son of the Governor develop a software package and market it to state universities and county school boards?

DECISION: Yes, however the Governor must refrain from any involvement in his son's business or in influencing universities or school boards regarding the software package.

This opinion is in response to your August 12, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 31, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are in the process of forming a business that will develop a software package that you intend to market to state universities and county school boards. The software package will assist the universities and school boards in the procurement of goods and services. You do not intend to market the software to any executive branch agencies. You are not an employee of state government; however your father is Governor Paul E. Patton. Governor Patton will not be an investor, partner, fiduciary or have any other involvement or ownership in your business venture. You ask for advice as to whether this business venture would cause any violation of the Executive Branch Code of Ethics.

KRS 11A.020(1) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

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(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Because you are not an employee of the executive branch of state government, the Commission has no jurisdiction over your actions. Thus, you are not prohibited from developing a software package and marketing it to universities and local school boards. However, your father, as Governor, is subject to the Executive Branch Code of Ethics, and thus is limited in what involvement he may have regarding your private business. The Commission believes that the Governor must refrain from any involvement whatsoever with your private business, including any ownership interest. Additionally, he should take great care not to use his position to influence, or in any way give the appearance of influencing, universities and school boards regarding your software.

Although the Commission has no jurisdiction over your actions, the Commission recommends that if you wish to help uphold the public trust regarding the independence of decisions made in state government, and also remove any inherent conflicts, you should take great care not allow those to whom you are marketing your product to become aware of your relationship to the Governor.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: CYNTHIA C. STONE
VICE CHAIR